



SIGMA

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MONTENEGRO
PUBLIC INTEGRITY SYSTEM
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Summary

Main Developments and Main Characteristics (strengths and weaknesses)

- 1. Shortcomings persist in the new conflict-of-interest legislation.** A new Law on Preventing Conflict of Interest was passed on 27 December 2008 (*Official Gazette*, no. 01/09 of 9 January 2009). This law is of poor quality, however, and has important shortcomings, like the previous law, which prevent it from providing a meaningful solution to the problem of conflicts of interest and incompatibilities. On the positive side, the new law introduces post-employment restrictions for one year after leaving office. However, given its flaws, the law will be enforceable on civil servants and public employees but probably not on politicians, for whom the effectiveness of the law and of its monitoring mechanism is questionable.
- 2. New legislation on financing politics is improved, but control mechanisms are still flawed.** The legal regime of financing political parties and electoral campaigns has undergone significant changes in 2008 and 2009. The new legislation identifies illicit sources of funds for political parties and electoral campaigns and sets the framework for transparent state budget funding of parties. Anonymous donations to parties and candidates are forbidden. Campaign expenditures are capped. Financial reporting obligations of political parties and candidates for election are spelled out in legislation, including in-kind and private donations, as well as penalties for non-compliance, but there is significant room for circumventing the rules. In addition, it is doubtful that the Ministry of Finance is the correct institution for checking and auditing financial reports of political parties and election candidates. Either the State Auditors Institution or a national electoral commission should be legally mandated and empowered to do so, if they are given the necessary resources and capabilities.
- 3. The judiciary and prosecutors are not sufficiently protected from politicisation.** The Law on Courts (2001) and the Law on the State Prosecutor's Office (2003), both amended in 2008, together with the Law on the Judicial Council, enacted for the first time in February 2008 (*Official Gazette*, no. 13/08), complete the legal framework for the judicial and prosecutorial services. The Judicial Council was established on 19 April 2008. Personnel management rules on judges and prosecutors are in place (recruitment, promotion, performance appraisal, salary levels, and disciplinary arrangements) to guarantee judicial independence as well as the accountability of judges and to ensure that the institutional management of the judiciary is independent of the government and parliament, but the current institutional and legal arrangements make the judicial and prosecutorial services too vulnerable to politicisation, as explained below.
- 4. Progress is visible in producing legislation, but implementation mechanisms are weak.** Apart from the already mentioned laws on conflict of interest and political party and electoral campaign financing, and the reform of judicial and prosecutorial services, other pieces of legislation or amendments relevant to anti-corruption have recently been passed. Reforms of the 2003 Penal Code were introduced in 2004, 2006 and 2008 (*Official Gazette*, no. 40/08). The Criminal Procedure Code of 2003 was also amended in 2004 and 2006 and at the time of writing is in the process of being amended again in parliament. The Law on International Legal Assistance in Criminal Matters was passed on 17 January 2008 (*Official Gazette*, no. 04/08). The Law on Free Access to Information was passed in 2005 and a new Law on Public Procurement in 2006. Finally, a Law on the Prevention of Money-Laundering and Terrorist-Financing was passed in 2007 and amended in 2008, while a Law on Witness Protection was passed in 2004. The July 2008 amendments to the Law on Civil Service and State Employees (*Official Gazette*, no. 50/08) introduced some measures to protect civil servants who denounce or provide information on corruption offenses (whistle-blowers).
- 5. Alignment of legislation with European standards is noticeable, but the institutional landscape that is emerging may be overly complex, as internalisation of the new values represented by those standards is doubtful, making the sustainability of reforms very uncertain.** Montenegro's legislative activity is significant and the country is in the process of

bringing national legislation in line with international standards, in particular with regard to criminal legislation and law enforcement capacities. It is, however, a matter for concern that the anti-corruption effort may be driven by international institutions to too high a degree, which poses questions concerning both the internalisation of the new values that those standards represent and the sustainability of reforms. At the same time, there are uncertainties as to whether in the medium term all of the resources and institutional structures that may be required to implement the action plans will actually be available, and if so, whether the resulting institutional landscape will be overly complex and difficult to deal with.

Recommendations for Reform

- Strengthen and ensure the effectiveness of measures regarding incompatibilities and conflicts of interest for politicians;
- Increase the technical capacity of parliamentary administrative services to produce legislation and, especially, to control the government;
- Establish more precise rules and more effective controlling mechanisms concerning the financing of political parties and electoral campaigns;
- Enact human resources management rules and procedures so as to minimise the risk of politicisation of judicial and prosecutorial services and especially to guarantee that judicial and prosecutorial appointments are merit-based and carried out transparently;
- Adopt the amendments to the Code of Criminal Procedure that are still pending, especially those related to the seizure of crime proceedings;
- In general, strengthen the capacities of all mechanisms and administrative units that have been created to monitor and control the implementation of new legislation.

Introduction

This report provides an analysis of some key elements of the public integrity framework of Montenegro. The report should help orient reforms and assistance. To delineate the “integrity framework”, we have drawn on concepts provided by OECD¹, the Council of Europe² and the European Commission³. The public sector elements of the framework comprise constitutional arrangements, the judiciary (including the prosecution), parliament, political campaigns and party financing, political accountability and responsibility, the public service and the administrative legal framework, external audit (including mechanisms to combat fraud), public procurement, the public expenditure management system, public internal financial control, policy-making and regulatory processes. These elements apply to all levels of the state, including municipalities and state enterprises.

In this report, we assess the extent to which institutional arrangements underpin, or undermine, integrity in parliament, the government (in its European continental meaning, i.e. the Council of Ministers as a constitutional body) and the judiciary. We also look at how political arrangements, especially financing of political parties and electoral campaigns, affect the integrity system. We then turn to national policies and institutions aimed at fighting corruption. Finally, we list the incorporation in Montenegro of the main international instruments for harmonising anti-corruption policies and legislation.

In other reports, we have assessed elements that have an impact on the integrity framework in public administration. The separation between these elements is not clear-cut because of overlaps in certain aspects – for example, rules concerning asset declaration may address civil servants, judges and/or politicians in the same legal instrument. The public administration elements that we have assessed were selected by the European Commission.

Sigma regularly produces assessments on: a) Public Service, b) Administrative Legal Framework, c) External Audit, d) Public Expenditure Management, e) Public Procurement, f) Public Internal Financial Control, and g) Policy-Making and Co-ordination. This report should be read together with these other assessment reports.

1. Integrity in Parliament

Inviolability of Members of Parliament and Parliamentary Immunity

The immunity of members of parliament is protected by article 86 of the 2007 Constitution, which confines this immunity to opinions expressed or votes cast in the performance of their duties as parliamentarians. The same provision also allows MPs inviolability, except in the case of *flagrante delicto*, for which a punishment of at least five years’ imprisonment is foreseen in the Penal Code. The Parliamentary Rules of Procedure (article 58) specify that requests for lifting immunity are to be forwarded to the Administrative Committee by the President of Parliament and that the Committee is to propose its recommendation on the matter at the next parliamentary session.

Article 82-15 of the Constitution establishes in a vague way that parliament “decides on immunity rights”, although it is unclear whether these immunity rights are only those of parliamentarians or also include the others mentioned in article 86 as enjoying the same immunity as MPs, such as the

¹ For example, from OECD: *Public Sector Integrity: A Framework for Assessment* (2005); *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences* (2003); *Trust in Government: Ethics Measures in OECD Countries* (2000); *Ethics in the Public Service: Current Issues and Practice* (1996)

² “Twenty Guiding Principles for the Fight against Corruption”, Resolution (97)24 of the Committee of Ministers of the Council of Europe of 6 November 1997

³ “The Ten Principles for Improving the Fight against Corruption in Acceding, Candidate and Other Third Countries”, contained in the Annex to the Communication of 28 May 2003 of the European Commission to the Council of the European Union and European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy against Corruption

President, the Prime Minister and members of the government, the President of the Supreme Court, the President and judges of the Constitutional Court, and the Supreme State Prosecutor.

This potential meddling of parliament in other state powers would be detrimental to the separation of powers. The point was raised by the Venice Commission, which indicated that “there is no reason to involve parliament in decisions on the immunity of other office holders”, and continued by stating that “it seems not justified to regulate immunity for the President, members of government and especially judges in the same manner as immunity of members of parliament. Immunity of the Head of State should be regulated separately, having regard to the impeachment procedure. Judges should not enjoy general immunity and there is no justification for involving parliament in waiving their immunity”⁴. No constitutional case law has emerged so far that would clarify the issue, especially the limits of parliament’s competence in lifting immunity, although article 128-5 of the Constitution further deals with the issue by stating that the Judicial Council is to decide on the immunity of a judge, which seems to clarify the issue for judges but not for judges of the Constitutional Court.

Apparently most requests for lifting immunity are based on libel, defamation or slander, which are manifestations of the free speech specifically protected by article 86 of the Constitution. In March 2007 the immunity of a parliamentarian was lifted on a basis other than libel.

Once immunity has been lifted by parliament, there are no special rules for the prosecution and trial of MPs or any other government officials protected by the immunity regime, but the general criminal procedure rules apply.

Incompatibility, Conflict of Interest and Asset Declaration of Parliamentarians

The conflict-of-interest regime in Montenegro was first established in 2004 with the Law on Conflict of Interest. The system had numerous shortcomings that were repeatedly pointed out in various international reports, including by Sigma. The major problems included laxity in permitting the exercise of multiple public functions, an imprecise definition of public official leading to conflicting interpretations, and inadequate provisions for control and sanctions.

A new Law on Preventing Conflict of Interest was passed on 27 December 2008 (*Official Gazette*, no. 01/09 of 9 January 2009)⁵. On the positive side, the new law introduces post-employment restrictions for one year after leaving office, which may nevertheless be difficult to enforce, especially for politicians. This law is of poor quality and continues to have important shortcomings that prevent it from providing a meaningful policy solution on conflict of interest and incompatibilities. The legal notion of public official is still too broadly defined. Sanctions for non-compliance in the form of financial penalties may face enforceability difficulties, which will perhaps be insurmountable. Article 9 allows considerable scope for interpretation as to what may constitute “exceptional” circumstances, and grants members of parliament the possibility to serve as members of a supervisory or managing board and even as executive directors of a public company or any other public institution of the state.

Another problematic issue that remains in the new law is the system of appointment of the seven-member Commission for the Prevention of Conflict of Interest, the supervisory body responsible for monitoring compliance with this law. The members of the Commission are appointed by a simple parliamentary majority on the proposal of the parliamentary Administrative Committee. It is questionable that a commission that has been politically appointed by parliament will be able to carry out any meaningful control of conflict-of-interest situations and asset declarations of parliamentarians who in turn elect the members of that commission. The arrangement is especially problematic as article 24 of the law establishes that the procedure for deciding whether there has been a violation of the law is to be initiated by the Commission on the request of the authority where the public official is performing or has performed his/her public function. The Commission may initiate this procedure *ex officio*. As parliamentarians do not have any hierarchical superior in the meaning of

⁴ See Venice Commission opinion on the Draft Constitution of Montenegro, adopted at its 73rd Plenary Session on 14-15 December 2007 at [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)047-e.pdf](http://www.venice.coe.int/docs/2007/CDL-AD(2007)047-e.pdf)

⁵ We use in this report the English translation of the law in the version provided on the website of the Commission for the Prevention of Conflict of Interest at <http://www.konfliktinteresa.cg.yu/obraci/Zakon-Engleski.htm>

article 24, and in view of the way in which members of the Commission are appointed, it is hardly convincing that there will ever be any conflict of interest investigated by the Commission, except if such an investigation fits a political argument.

The procedure terminates with the recommendation of the Commission to the relevant authority to dismiss the official (article 38), a possibility that is only pertinent for civil servants and not for parliamentarians, or to refer the issue to the prosecutor if there is a suspicion of a criminal offense having occurred.

This problematic arrangement also highlights the inappropriateness of regulating conflict of interest in a homogeneous way for politicians and civil servants, as pointed out in previous Sigma reports. Regulations on conflict of interest should be distinct and different for politicians and civil servants because these two groups represent different domains and realities in public life, and their respective conflict-of-interest situations may bear very different consequences for the public interest. Likewise, the mechanisms designed to account for non-compliance should also be different (e.g. a civil servant should not be scrutinised by a parliamentary commission, whereas an MP or a government member should be; an MP is not to be scrutinised by a hierarchical superior, because he/she does not have a superior in the meaning of article 24 of the law, etc.).

As indicated above, the new conflict of interest regime permits an MP to serve as a member of the managing board of an enterprise where the state has an ownership stake of 25% or more. However, the law itself (article 9) suggests that the possibilities are wider and that the permissible additional function includes being “a president or a member of the management or supervisory board, executive director or a member of management board of public company, public institution or any other legal entity in a public company or public institution in which the state, i.e. local government is owner.”

This large exemption is problematic, not only with regard to the incompatibility of holding both legislative and executive functions, but also in terms of being able to devote the appropriate attention to legislative activity. Most importantly, it is questionable that parliamentarians holding executive powers in public companies or executive agencies will have the capacity to bring those entities to account before parliament, thereby diluting the oversight role that has been entrusted to parliament by the Constitution, especially concerning the control of expenditures (article 82-5), which are to be controlled by the State Auditors Institution reporting to parliament (article 144). The problem is aggravated by the poor capacities of the Parliamentary Service, which lacks the expertise needed to support parliamentarians’ reviews of legislation or scrutiny of executive bodies’ reports.

Articles 19 to 21 of the Law on Preventing Conflict of Interest regulate the disclosure of income and property and its register, which is to be made available to the general public and maintained by the Commission for the Prevention of Conflict of Interest. MPs and other officials included within the scope of the law have to file a report to the Commission, providing accurate data on their property and income, as well on the property and income of their spouses and children if they are still part of the same household, within 15 days of taking up office. The declaration is to be made recurrently every year and every time a change occurs in the MP’s/official’s situation, as well as at the end of the relevant mandate. Formal compliance with the asset declaration requirements seems to have improved since 2004, and the declarations are beginning to reflect the true financial situation of officials. However, the lack of an adequate review mechanism does not guarantee the full truthfulness of the declarations, as we will explore below.

The Commission’s sanctioning powers are a legally problematic issue. It is doubtful whether the Commission will be able to impose the fines foreseen in articles 49 to 51 of the law, as the entitlement to impose them is not among the Commission’s competences, as listed in article 40 of the law. It is in fact unsure whether a punishing power is granted to the Commission by article 40-1, which confers upon it the powers of “conducting the procedure and making decisions regarding any violations of the provisions” of the law. This uncertainty is reinforced by the wording of article 34 of the law, which also refers to the decision-making powers of the Commission. Article 34 only authorises the Commission to state “whether the public official violated the law by his act, activity or omission”, but does not enable the Commission itself to impose sanctions. The Commission may subsequently refer

the issue to the hierarchical superior of the concerned official to take disciplinary action, a solution that is not applicable to politicians, as indicated above.

It is questionable that the notion of “decisions” employed in articles 40-1 and 34 implies sanctioning powers, as the power to impose administrative sanctions is to be expressly conferred by law. In this regard, article 11 of the Constitution states that “power shall be limited by the Constitution and the law” and article 16 refers to the law as the only way of limiting human rights and liberties, a protection that is further set out in detail in article 24 of the Constitution, which states that “guaranteed human rights and freedoms may be limited only by the law”, while article 10 states that “in Montenegro anything not prohibited by the Constitution and the Law shall be free”. Considering that legal provisions restricting constitutionally protected rights have to be interpreted restrictively and that there is a constitutional right to be punished only by a public authority that has legally awarded and explicit powers to do so, it follows that the Commission for the Prevention of Conflict of Interest has no sanctioning powers. The Commission seems to have no power beyond “naming and shaming” public officials. Consequently, the control mechanism at the disposal of the Commission is relatively ineffectual, while the conflict of interest legislation for parliamentarians and others becomes practically unenforceable.

Article 85 of the Constitution contains a rather enigmatic provision concerning the nature of parliamentary duty and the legal consequences that might follow from it, including the issue of incompatibility and conflict of interest. According to that provision, “a member of the Parliament shall have the right to perform the duty of an MP as an occupation”. One question would be whether parliamentarians have a labour relationship with parliament, which may lead to overtly absurd consequences, not only in terms of incompatibility but also in terms of hierarchical working relationships, including dismissal.

There seems to be no specific interpretation of this constitutional clause by the Constitutional Court, except a ruling that pre-dates the current Constitution, which seems to point in the direction of a constitutional rather than a labour, law-based relationship. According to that ruling of 18 June 2004 (*Official Gazette*, no. 45/04), “the right to undisturbed discharge and undisturbed enjoyment of term of office includes a free term of office, immunity and establishing the reasons for cessation of term of office to deputies, as a protection from arbitrary revoking of term of office” (among others, by political parties). This Constitutional Court precedent renders article 85 still more unfathomable, unless it aims to reintroduce the possibility for political parties to dismiss parliamentarians prior to the expiry of their tenure, which would be an unwelcome development for the country’s still young democracy.

Remuneration of Members of Parliament

The remuneration of parliamentarians – and government members – is defined in the Law on the Earnings and Other Income of State and Public Officials, as amended in 2008. The salary is calculated according to a formula of coefficients based on grades of functions and with additional increases based on years of employment.

The highest salary coefficient (14.84) is set for the President of Montenegro and the lowest (10.08) for the Deputy Secretary General of Parliament. The responsible body of the institution in which the official performs his/her function determines this coefficient. Parliament’s Administrative Committee determines the coefficients for the positions of President of Montenegro and the Deputy Secretary General of Parliament. The current value of a single coefficient is 75 EUR.

Increases based on years of employment are defined as follows: for each year up to 10 years of service, 0.5% per annum; between 10 and 20 years of service, 0.75% per annum; and between 20 and 30 years of employment, 1% per annum.

The law further provides for the possibility of an increase in the basic salary. A decision of the parliament’s Administrative Committee of June 2008 set the rate of increase at 30% for the President of Montenegro and MPs and at 15% for public officials defined by the law. The Administrative Committee has also defined additional compensation for members of parliament for their work in

parliamentary “collegiums” and other working bodies (committees). It seems strange that parliamentarians are paid additional rewards to participate in the work of parliamentary committees because it is normally part of the regular parliamentary work already included in the MP’s salary.

Officials defined by this law are also entitled to holiday and other paid leave, professional development, meals during business hours, travel expenses for business trips, compensation for residing away from the family, moving expenses, pension contributions, and other financial assistance in special circumstances defined in other by-laws. No special tax regimes exist for public officials, including parliamentarians.

Parliamentarians consider their salaries to be low, and this is often alleged to be the main reason for allowing parliamentarians to exercise the function of a manager or board member of a public company or other public entity. It was also the assumed reason for the adoption of article 9 of the Law on Preventing Conflict of Interest of 2008 (see above). The adoption of a more transparent salary scheme would imply raising MPs’ salaries if they consider such an increase suitable, but this should entail the elimination of allowances for committee participation as well as the abolition of the unjustified exception provided by article 9 of the above law.

Conclusion

The regulation of the immunity and inviolability of MPs is up to international standards. The conflict-of-interest regulation may lead to problems of constitutionality. In any event, its many loopholes and unjustified exceptions for parliamentarians makes the newly adopted regime almost ineffectual. A more transparent salary scheme would imply raising MPs’ salaries if they consider such an increase to be suitable, but this should entail the elimination of allowances for committee participation as well as the abolition of the unjustified exception provided by article 9 of the Law on Preventing Conflict of Interest.

2. Integrity in Government

Immunity of Government Members

The immunity enjoyed by deputies is also enjoyed by members of the government. Similarly to MPs, members of the government are not subject to any special prosecution rules once their immunity has been lifted.

Incompatibility and Conflict of Interest

The Constitution (article 104) states that “the Prime Minister and Government members shall not discharge duties of a Member of the Parliament or other public duties or professionally perform some other activity”.

As described above, however, the new Law on Preventing Conflict of Interest (article 6) stipulates that “the membership of a public official, appointed or elected, in permanent or provisional working bodies or mixed commissions, established by an authority, shall not be considered as an exercise of two or more public functions within the meaning of this Law,” which in fact permits an accumulation of certain governmental functions. This provision fails to distinguish between inherent appointments *ex officio* and other assignments to perform duties in public bodies and other types of government commissions. This approach is unclear, because it fails to eliminate the concern that a multiplicity of such functions could constitute an inappropriate accumulation of functions, salaries and influence.

The regime of asset declarations is provided for in the same law, and an evaluation of its effectiveness has likewise been provided above.

Unlike parliamentarians, government members cannot be members of any management or supervisory board or serve as the executive director or member of the management of a public company, public institution or any other legal entity (article 9 of the Law on Preventing Conflict of Interest). Government members cannot be parliamentarians, as this is forbidden by article 104 of the Constitution.

The 2008 Law on Preventing Conflict of Interest introduces a novelty, namely the post-public employment incompatibility (article 13), whereby after leaving office there is a moratorium of at least one year for the government member or public official to carry out the following functions: act as a representative or attorney at law of a legal entity that is in a contractual or business relationship with the authority where he/she had exercised public functions; represent a legal or physical entity for a case in which he/she had participated in decision-making while in office; audit or manage a legal entity over which he/she had exercised supervision while in office; enter into contractual relations with the authority in which he/she had exercised his/her functions; and use information that he/she had obtained while he/she was in function. The problem with this well-intentioned provision is that it may soon expose its enforceability difficulties.

Conclusion

Similar conclusions may be drawn for the regulation of the immunity of government members, although the regulations on incompatibility and conflict of interest have fewer unjustified exceptions, such as the one displayed in the above-mentioned article 9 for parliamentarians. Concerns remain about the likely ineffectiveness of the Commission for the Prevention of Conflict of Interest and in general the problematic enforceability of the conflict-of-interest provisions with regard to politicians.

3. Role of Parliament in Combating Corruption in Government

Political Accountability of Government to Parliament

Parliament does have at its disposal formal accountability mechanisms to hold the government to account. The Constitution (article 82) defines among the powers of parliament the power to adopt, upon the proposal of the government, the budget and the final statement of the budget, the national security and defense strategy, as well as the development and special plans. It can be argued that parliament would adopt these documents produced by the government only if they were of satisfactory quality.

Furthermore, parliament has the power to supervise the army and the security services; to elect and dismiss from duty the Prime Minister and members of the government; to elect and dismiss from duty the President of the Supreme Court, as well as the President and judges of the Constitutional Court; and to appoint and dismiss from duty the Supreme State Prosecutor and state prosecutors, the Protector of Human Rights and Liberties (Ombudsman), the Governor of the Central Bank and members of the Council of the Central Bank, the President and members of the Senate of the State Audit Institution, and other officials stipulated by law. The Constitution also empowers parliament to hold a confidence vote on the government and on individual ministers (article 107).

Parliamentary Inquiries, Questions and Interpellations

The Constitution further provides for two accountability mechanisms of the government before parliament: interpellations (article 108) – “[an] interpellation to examine certain issues regarding the work of the Government may be submitted by minimum 27 Members of the Parliament”; and parliamentary investigations (article 109) – “the Parliament may, at the proposal of minimum 27 Members of the Parliament, establish a Fact-finding Commission in order to collect information and facts about the events related to the work of the state authorities.”

The Parliamentary Rules of Procedure define the procedure for interpellations and introduce additional instruments: “control hearing”, “consultative hearing”, the Prime Minister’s Hour, and MP Question Time. Invitees to “control hearings” are “obliged” to accept the invitation. The practice of parliamentary committees shows that there are no registered cases of the non-acceptance of an invitation or a refusal to appear at control hearings. These hearings are always covered by the media and announced as important information about parliamentary political life. If parliament is not satisfied with the responses of government members in control hearings, it can initiate the no-confidence voting procedure against the government (article 107 of the Constitution).

Public Bodies Reporting to Parliament

A number of institutions submit annual reports to parliament — among them, the Chief State Prosecutor, the Judicial Council, and the Commission on Preventing Conflict of Interest (whose members are also elected and dismissed by parliament, as shown above), the State Auditors Institution and the Ombudsman. The report of the State Auditors Institution on the budget execution is extensively reviewed and discussed before its adoption by parliament, apparently because a member of the opposition usually holds the chairmanship of the parliamentary Budget Committee.

Conclusion

Parliament has a role in law-making and in controlling the government, but its effectiveness is questionable. Overall, the instruments available to parliament are not used sufficiently or effectively. The Prime Minister's Hour and MP Question Time are held infrequently. Only a few committees have held control hearings, and almost none has held consultative hearings, with the focus remaining on activity in the plenary. Much more could be done in committee if MPs really wanted to oversee the activities of the government. Increasing the technical capacity of parliamentary administrative services would be crucial for a better parliamentary performance, both in producing legislation and, especially, in controlling the government.

4. Political Party and Electoral Campaign Financing

General Legal Framework

The legal regime on financing political parties and electoral campaigns has undergone significant changes in 2008 and 2009. The previous rules had a number of flaws, most notably the nearly complete lack of enforcement, and there was no mechanism in place to ensure the veracity of the information provided. Two new laws were recently passed, namely the Law on Financing of Political Parties (*Official Gazette*, no. 49/08 of 15 August 2008) and the Law on Financing Campaigns for the Election of the President of Montenegro, Mayors, and Presidents of Municipalities (*Official Gazette*, no. 08/09 of 2 February 2009).

Sources of Political Party Revenues

Political parties receive significant state funding. All political parties, coalitions, and groups of citizens that hold a minimum of one seat in parliament (“parliamentary parties”) have the right to receive state funding for their regular activities and for the work of their MPs and members of municipal assemblies. All registered and confirmed (by the responsible electoral commission) electoral contestants (lists) have the right to benefit from state financing of their electoral campaigns, as do the individual candidates competing for the posts of President of Montenegro, mayor and president of a municipality.

State financing of the regular work of political parties in the national parliament ranges between 0.2% and 0.4% of the current state budget (excluding the capital budget and special funds). State funding for the regular work of parties in municipal assemblies ranges between 0.5% and 1% of a current municipal budget. Of this total figure, 15% is distributed equally to all political parties represented in parliament/assembly, and the remaining 85% is distributed proportionally according to the number of seats held.

Electoral Campaign Funding

The total state financing of electoral campaigns of parties amounts to 0.15% of the current budget of the year in which the campaign takes place. Of this amount, 20% is distributed equally among all of the submitted electoral lists within eight days of confirmation of the list. The remaining 80% is distributed proportionally according to the successful mandates within 15 days of the contestant party's submission to the responsible electoral commission of its report on the financing of the electoral campaign.

State funds supporting candidates competing for the posts of President of Montenegro, mayor, and president of municipality are distributed as follows: 10% equally to all certified candidates within 10 days of confirmation of their candidacy; 40% equally among candidates who win more than 10% of the votes within 10 days of the official declaration of electoral results; and 50% to the winning candidate.

The total amount of state funds available for financing the campaigns for President of Montenegro, mayor, and president of municipality is between 0.05% and 0.1% of the state budget corresponding to the election year. An additional 0.05% of the current budget is distributed proportionally to the number of successful mandates on those lists that have collected private funds equal to twice the amount to which they are entitled through the equal distribution of the initial 20% of available state funds. This “bonus” amount is proportionally reduced for parties/lists that fail to raise private funds to the level of the required threshold.

The state provides no other support for electoral contestants, except for announcing “all promotion rallies” free of charge and under equal conditions on the state-owned radio and television and in the state-owned newspaper *Pobjeda*. In fact, any other assistance is expressly forbidden in the Law on the Election of Counsellors and Representatives⁶.

The “submitter of the electoral list”⁷ is required to open a special bank account for the collection of all campaign funds and for the payment of all campaign expenditures; in the case of candidates for President of Montenegro, mayor, and president of municipality, the candidates are required to designate a responsible person. The same person is also responsible for submitting all specified reports and for overall compliance with the law, as applicable.

Donations and Private Financing

Political parties are also allowed to receive financing from private sources up to 100% of the amount of funds provided by the state. Non-parliamentary parties are permitted to finance their activities from private sources up to 5% of the total amount of state funding available to parliamentary parties. Private sources are defined as membership fees, donations, revenue from activities and assets, wills, non-profit activities, and gifts (stock certificate or other object with a value over 50 EUR).

Donations to political parties are prohibited from the following sources: foreign states; physical and legal persons residing outside Montenegro; anonymous donors; public/state institutions and enterprises, including those with a state minority share; trade unions; religious organisations; non-governmental organisations; casinos, gambling/betting establishments and organisers of games of chance; and enterprises that have received state contracts for two years before and after the duration of those contracts.

Cash donations are also forbidden. Annual individual donations are limited to between 2,000 EUR and 10,000 EUR for individuals and legal entities, respectively.

If the funds collected from private sources for the financing of electoral campaigns exceed the prescribed limit, the excess funds are to be transferred to the regular bank account of the party. If the total amount of funds in the regular bank account of a party exceeds the prescribed limit (amount equal to the available state financing in a given year), the party is obliged to return the excess amounts to the state budget. Similar restrictions apply for candidates for President of Montenegro, mayor, and president of municipality.

⁶ The English translation of the law is provided by the OSCE/ODIHR Legislation online service, available at www.legislationline.org/documents/action/popup/id/3765 and the Montenegrin version at www.izbori2009.me/wp-content/uploads/2009/03/zoioip.pdf.

⁷ The term “submitter of the electoral list” refers to the fact that electoral lists must be submitted by an authorised person, typically the person leading the list, and this individual assumes responsibility for compliance with all applicable laws.

Financial Reporting and Sanctions

All electoral contestants are further obligated to submit reports indicating in detail the sources, amounts, and structure of the collected and expended funds, together with supporting documentation, to two bodies: 1) within 45 days of the date of the election, to the competent electoral commission, which in turn submits all reports to the National Electoral Commission; and 2) to the auditors in the Ministry of Finance, although the time frame for this submission is not specified in the law.

Where the total amount of funds received from private sources exceeds 50,000 EUR, the authorised person is likewise obligated to engage an authorised auditor within 15 days of the date of the election and to submit the auditor's report. Parliamentary parties are further obligated to submit annual reports providing similar details. The National Electoral Commission is obligated to publish the reports received on its website and in the *Official Gazette*; on its website the Commission must also publish the names of the individual donors (physical and legal persons).

Responsibility for overseeing the implementation of these laws is, for the time being, with the Ministry of Finance. As these laws were applied for the first time to the 29 March 2009 elections, some time is needed to review how the new rules are functioning in practice. By law, the reports of the electoral contestants should have been filed by 13 May 2009, and the electoral commissions are responsible for making these reports public thereafter.

The State Auditors Institution (SAI) in principle has the authority to audit political parties but it is not obligated to do so, and it is difficult to predict when and if such audits may be incorporated into the SAI work plans. The SAI Senate is entirely independent in defining priorities for performing audit, and it adopts an annual Auditing Plan. The 2009 plan does not envisage, as a separate audit, the auditing of expenditures incurred by political parties, despite the fact that legislative elections were held on 29 March 2009, putting the new regulations to a first test. However, as the final budget accounts for 2009 will be audited, the public funds spent by political parties will be audited and revised while the final budget accounts are audited, and not as a separate performance of audit or as a separate item of expenditure.

The law lists a range of financial penalties for breaches of the campaign and party financing rules, both for responsible individuals (15 to 20 times the minimum monthly wage, currently set at 55 EUR) and for legal entities (100 to 200 times the minimum monthly wage); penalties can also be imposed on donors and on electoral commissions that fail to fulfil their obligations. No other sanctions are foreseen by the law, although detected fraud would be subject to relevant criminal penalties; no penalties in terms of loss of mandate are foreseen by the law.

Conclusion

The legislation clearly identifies licit and illicit sources of funds for political parties and for electoral campaigning and provides for a transparent state budget funding for parties. Anonymous donations to parties and candidates are forbidden. Campaign expenditures are capped. Financial reporting obligations of political parties and election candidates are spelled out in the legislation, including reporting on in-kind and private donations, as are the penalties for non-compliance.

However, it is dubious whether the Ministry of Finance is the correct institution for checking and auditing financial reports of political parties and candidates for election. Either the State Auditors Institution or a national electoral commission should be legally mandated and empowered to do so. On the other hand, there is significant room for breaching the rules, and the current system of control is yet to be fully tested. The new regime has difficulties in detecting unauthorised campaign fund-raising or spending incurred outside the dedicated bank accounts.

5. Integrity in the Justice System

According to the Constitution, the independence of the judiciary is assured, as the courts are "autonomous and independent" (article 118) and the State Prosecutor's Office is "a unique and independent state authority" (article 134). Both judges and prosecutors are prohibited from membership in political organisations (article 54). Concomitantly, the Judicial Council is the

autonomous and independent authority that ensures the autonomy and independence of the courts and the judges (article 126), while the Council of Prosecutors is to ensure the independence of the state prosecution and the state prosecutors (article 136).

The Laws on Courts (2001) and the Law on the State Prosecutor's Office (2003), both amended in 2008, and the Law on the Judicial Council, enacted for the first time in February 2008 (*Official Gazette*, no. 13/08), complete the legal framework for the judicial and prosecutorial services. The Judicial Council was established on 19 April 2008. The Judicial Council Law includes a procedure for the appointment of its members and sets out new competences related to the election of judges. The Law on the State Prosecutor's Office has resolved a previous conflict whereby the State Prosecutor had a double function – to prosecute criminal activities and to defend state interests in legal matters; the new law provides for attorneys to represent the state, and therefore prosecutors now deal only with criminal cases. All judges and prosecutors enjoy functional immunity, as awarded by the Constitution (articles 122 and 137).

Human Resources Management Practices affecting Judicial Independence

According to the Constitution, parliament has the power (by a simple majority vote) to “elect and dismiss from duty the President of the Supreme Court, the President and the judges of the Constitutional Court” (article 82). This constitutional design – whereby the President of the Supreme Court, who is also *ex officio* president of both the Judicial Council and the Nominating Commission to recruit judges, is not only elected but also dismissed from duty by parliament – is problematic from the standpoint of preserving the Supreme Court's independence from politics as well as the independence of the judiciary as a whole.

The Judicial Council is responsible for the recruitment of judges by defining a recruitment process, including specifying the procedures, the content of position advertisements, application forms, and criteria for selection. It appoints a three-member Nominating Commission with a one-year mandate, which selects judges throughout that period. The President of the Nominating Commission is always the President of the Judicial Council, and the majority of its members must be judges. The criteria for the selection of judges are defined in articles 32 through 35 of the Judicial Council Rules of Procedure, including the scoring guidelines (each criterion is given a weight of between 1 and 5 points).

The criteria concern technical knowledge (based on past academic performance, computer and language skills, and results of a written examination for applicants who have not previously served as judges); work experience, work results, publications and other relevant activities, and advanced education. The stated criteria provide a considerable level of detail, although there is insufficient clarity about how the weight of each of the criteria is determined. The scoring process could be more objective and competitive.

The appointment, dismissal, promotion, and disciplining of individual judges and of court presidents are the responsibility of the Judicial Council (article 125). The fact that judges and court presidents are no longer elected by parliament but appointed by the Judicial Council would seem to be suitable for preserving the autonomy and independence of the courts and judges, as stipulated in article 126 of the Constitution. However, the Judicial Council has ten members, four of whom are elected by judges, five by the government or the ruling party (Minister of Justice, President of the Supreme Court who is also President of the Judicial Council, one by the ruling party in parliament, two by the President of the Republic from among renowned lawyers), and one by the opposition party in parliament. This appointment scheme, in which the majority of appointments are based on political party quotas, is likely to further politicise the Judicial Council. Moreover, the recruitment system of judges is also politicised, as competitions to enter the judiciary are formally open and merit-based, but have severe limitations. Candidates are required to have a minimum of qualifications (5-15 years of career experience; law degree; Bar examination), but there are no criteria for ranking candidates or for motivating an appointment proposal.

Judicial institutions make appointment proposals, and the Council has ample discretion to choose from among the various proposals. There is therefore no guarantee of professional, merit-based

appointment of the remaining four Council members appointed by the judiciary. As a result, the appointment of judges depends too much on parliamentary political bargaining.

The regular evaluation of judges is not specified in any of the laws or Judicial Council documents, and it appears therefore that it is not formally required, although the Law on Courts requires the presidents of courts to report to the Judicial Council annually on the work of the courts (no details on the form and content of this report are specified, however)⁸.

The remuneration of judges and prosecutors is defined in the Law on Earnings and Other Income of Judicial and Constitutional Functions according to a formula of grades of functions and years of employment, with a 30% supplement applied across the board. The lowest judicial salary grade is that of a judge of a basic court or of a deputy state prosecutor, and it is calculated on the basis of a coefficient that is 10 times the standard monthly salary defined by the government.

The current value of the coefficient is 75 EUR, making the lowest judicial salary 975 EUR per month. The highest base judicial salaries (those of the Presidents of the Supreme Court and the Constitutional Court and of the Chief State Prosecutor) have the coefficient of 12.98. For each year up to 10 years of service, salaries are increased at 0.5% per annum; between 10 and 20 years of service, at 0.75% per annum; and between 20 and 30 years of employment, at 1% per annum.

Members of the judiciary receive additional benefits, such as meals during work days, assistance with housing rental through a reimbursement up to the amount of three basic monthly salaries, and life insurance, as well as a special form of unemployment insurance upon discontinuing employment for a period of up to one year or until either the pension or new employment begins.

Integrity and Accountability of Judges

The Judicial Council appoints a three-member Disciplinary Committee (president and two members) and their deputies. An Office for Reporting Corruption in the Judiciary was set up in May 2009, while the Office for Citizens' Complaints in the Supreme Court is still operational. Any physical or legal person has the right to lodge with the Judicial Council a complaint on the work and conduct of a judge, which may be anonymous but must be in written form. The Judicial Council forwards the complaint to the president of the court where the concerned judge works, and it is the president of the court who makes a preliminary assessment of the complaint's truthfulness prior to submitting it to the Disciplinary Committee of the Judicial Council together with a written recommendation, with justifications, as to whether disciplinary proceedings should be initiated.

A recommendation to initiate disciplinary proceedings is forwarded to the accused judge, who has eight days to respond and who may engage a defence attorney. A hearing is scheduled up to 15 days of receipt of the written response, and the Disciplinary Committee must reach a decision within three days of the hearing. The accused judge has the right to challenge the decision of the Disciplinary Committee before the Judicial Council (the member who took part in the Disciplinary Committee's review is excused from the proceedings), and the decision of the Judicial Council is further subject to review by the Administrative Court.

The Judicial Council has delivered official statistics on disciplinary proceedings for 2008. Six recommendations were made to initiate disciplinary proceedings against judges, two judges were dismissed and two judges resigned following notification of the initiation of disciplinary proceedings against them. Nine judges were temporarily suspended because they were under investigation.

Prosecutors

The Constitution (article 82) stipulates that parliament has the power (by a simple majority vote) to "appoint and dismiss from duty the Supreme State Prosecutor and State Prosecutors...", although the

⁸ The annual reports issued by the Judicial Council on the work of the courts (the last one available is for 2007) focus on the numbers, structure, and status of cases processed, with an emphasis on reducing a significant backlog, which is one of the priorities of judicial reform efforts. Available on the website of the Judicial Council: www.sudskisavjet.gov.me/LinkClick.aspx?fileticket=xdABqoFOEYY%3d&tabid=62&mid=400&forcedownload=true.

appointment of state prosecutors is made on the recommendation of the Prosecutors Council; deputy prosecutors are appointed and dismissed by the Prosecutors Council alone. The Venice Commission⁹ expressed serious concern about the parliamentary appointment of state prosecutors (and of the Prosecutors Council) without a qualified majority, stating that it “remains convinced that these elements seriously endanger the independence of the prosecutor’s office because they could lead to a politicisation of the appointment process, and probably even more dangerously, to the politicisation of dismissals”. Other threats to the independence of prosecutors include the possibility of secondment of prosecutors without their agreement in exceptional circumstances and without the right to file a protest with the Prosecutors Council.

As stipulated in the Law on the State Prosecutor’s Office (articles 84 to 87), the Prosecutors Council consists of a president and ten members. The President of the Prosecutors Council is *ex officio* the Chief State Prosecutor. Members are appointed by parliament in the following manner: six among state prosecutors and deputy state prosecutors, appointed following a vote by secret ballot at an extended session of the Chief State Prosecutor’s Office (which includes the Chief State Prosecutor, his/her deputies, and high state prosecutors); one member is a professor from the Law Faculty in Podgorica, appointed on the proposal of the Podgorica Law Faculty; two are prominent lawyers in Montenegro, one of whom has experience in the protection of human rights and freedom, at the proposal of the President of Montenegro, with the advice of the Ombudsman¹⁰; and one is a representative of the Ministry of Justice, appointed on the proposal of the Minister of Justice.

The appointment procedure for state prosecutors is outlined in some detail in articles 31-36 of the same law (reiterated in the Rule of Procedure of the Prosecutors Council) and to a significant extent resembles the procedures set down by the Judicial Council. The formal emphasis is on professional qualifications—technical knowledge (based on past academic performance, computer and language skills, and results of a written examination for applicants who have not previously served as judges), work experience, work results, publications and other relevant activities, and advanced education. There are some scoring guidelines but, as with judges, these guidelines are insufficiently precise and leave considerable scope for subjectivity.

Disciplinary measures and complaints are considered by a three-member Disciplinary Commission, but complaints may only be lodged by “authorised” persons¹¹. Decisions of the Disciplinary Committee may be appealed to the Prosecutors Council, and the Council’s decisions are further subject to administrative appeal. There are neither established obligations nor outlined procedures for an annual review and evaluation of prosecutors’ performance.

The Chief State Prosecutor is appointed by parliament and has no special status other than the role of presiding over the Prosecutors Council and the Nominating Commission. The Chief State Prosecutor is also responsible for initiating disciplinary proceedings against lower-level prosecutors and for proceeding before the Supreme Court, the Appellate Court, the Administrative Court, other courts and other state authorities, in accordance with the law, among other duties.

Conflict of Interest of Judges and Prosecutors

Judges and prosecutors cannot be members of parliament or have any other public duties or professionally perform any other activity (articles 123 and 138 of the Constitution). The Law on Preventing Conflict of Interest of 27 December 2008 also applies to judges and prosecutors.

⁹ Venice Commission, “Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro”, CDL-AD(2008)005, [www.venice.coe.int/docs/2008/CDL-AD\(2008\)005-e.asp](http://www.venice.coe.int/docs/2008/CDL-AD(2008)005-e.asp).

¹⁰ It may be noted that the obligation, at a minimum, to consult with the Ombudsman on this matter was missing from the initial draft amendments and was added at the recommendation of the Venice Commission.

¹¹ The Minister of Justice for the Chief State Prosecutor; the High State Prosecutor and the Basic State Prosecutor for their deputies; the Chief State Prosecutor for the High State Prosecutor and the Basic State Prosecutor; and the High State Prosecutor for the Basic State Prosecutor—within 15 days of the date on which he/she learns of the potential neglect/breach of duty and not later than 60 days of the date on which the reasons for the establishment of disciplinary responsibility emerged (article 42).

Accountability of the State for Defective Functioning of Justice

Article 38 of the Constitution provides that a “person deprived of liberty in an illegal or ungrounded manner or convicted without grounds shall have the right to the compensation of damage from the state,” while according to article 149, the Constitutional Court is responsible for deciding on “Constitutional appeal due to the violation of human rights and liberties granted by the Constitution, after all other efficient legal remedies have been exhausted,” while “any person may file an initiative to start the procedure for the assessment of constitutionality and legality” (article 150). The Law on Obligatory Relationships provides a basis for seeking compensation from the state for damages caused by a defective functioning of justice.

Conclusion

Human resources management arrangements within the judiciary may compromise judicial independence from politics. Personnel management rules are in place (recruitment, promotion, performance appraisal, salary levels, and disciplinary arrangements) and are aimed at guaranteeing judicial independence as well as the accountability of judges, but the institutional and legal set-up makes the judicial and prosecutorial services visibly vulnerable to politicisation¹².

6. Anti-Corruption Policies and Administrative Reforms

Anti-Corruption Strategy

The Programme for the Fight against Organised Crime and Corruption, also known as the National Anti-Corruption Programme¹³ (hereafter referred to as the National AC Programme)—is the government’s strategic framework for the fight against corruption. Adopted in July 2005, the National AC Programme addresses a number of general and specific preventive and repressive (law enforcement) measures, with a strong emphasis on international co-operation. An AC Action Plan for putting the objectives and measures outlined in the National AC Programme into operation, drafted by an inter-agency commission that included civil society representatives, was adopted by the government in late August 2006. The first AC Action Plan covered the period from 2006 to 2008. A second action plan, known as the “Innovated Action Plan”, covering the period 2008-2009, was adopted by the government in May 2008. This second action plan to a great extent reflects the first, but contains a number of more specific measures, including measures focusing on local governments, that demonstrate a positive evolution in thinking during the process of implementation and review. It suggests a more thorough understanding of the challenge of fighting corruption.

With regard to local governments, the Innovated Action Plan obliges each municipality to prepare and adopt specialised programmes for the fight against corruption and action plans for their implementation by the end of 2008 on the basis of models elaborated by a working group composed of representatives of the Ministry for Internal Affairs and Public Administration, the Union of Municipalities, local administrations and civil society; the working group is advised by experts from the Council of Europe and supported by UNDP. It seems that due consideration has been given to integrating anti-corruption measures into the larger process of local government reform, which is encouraging. However, the first report on implementation, issued in February 2009 by the Commission for Monitoring the Implementation of the Action Plan for the Fight against Corruption at Local Level, indicated that a number of municipalities had not submitted reports on progress and that only two municipalities had adopted anti-corruption plans. Nevertheless, these documents and actions may generate important frameworks for implementing reforms and for pursuing the fight against corruption if they are taken seriously and if the authorities give them a meaning that goes beyond a bureaucratic exercise.

¹² However, GRECO’s “Joint First and Second Evaluation Rounds Compliance Report on Montenegro”, adopted in Strasbourg on 1-5 December 2008, states that “GRECO is pleased to note that the recruitment and promotion of judges and prosecutors are strictly subject to objective criteria, such as professional experience and integrity”. The report is available at http://www.njeguskij.org/IMG/pdf_GrecoRC1_2_2008_5_ME_EN.pdf

¹³ Available in English at www.gom.cg.yu/files/1125055411.doc and in Montenegrin at www.gom.cg.yu/files/1124287629.doc

Various institutions are responsible for implementing segments of the National AC Programme: a total of 54 institutions at central level, plus each of the local government units (19 municipalities, the capital city Podgorica, and the historic capital of Cetinje). The implementation process is overseen by the high-level National Commission for Monitoring the Implementation of the Programme for the Fight against Corruption and Organised Crime, which was established by a decision of the government on 15 February 2007. The Commission is chaired by the Deputy Prime Minister for European Integration¹⁴, a secretary and its other members are the Minister of Interior and Public Administration, the Minister of Finance, the Minister of Justice, the President of the Supreme Court, the State Prosecutor General, two members of parliament, the Head of the Police Directorate, the Head of the Police Department for the Fight Against Economic Crime, the Director of the Directorate for Anti-Corruption Initiative, and two NGO representatives.

In October 2007, the National Commission established a Tripartite Commission (representative of the Supreme Court, State Prosecutor General, and the Police Directorate) for joint collection, reporting, and analysis of reports, investigations, and processes of corruption-related offences. The individual reports are analysed and prepared for submission to the Commission by an “Expert Body”, consisting of representatives of the Police Directorate, the Directorate for Anti-Corruption Initiative, the Ministry of Justice, the State Prosecutor General, and the Cabinet of the Deputy Prime Minister for European Integration. It is planned, however, that the Directorate for Anti-Corruption Initiative (DACI) will take over this function in 2009.

Conclusion

It is a matter of concern that the anti-corruption effort may be driven by international institutions to too high a degree. It is uncertain whether in the medium term all of the resources and institutional structures that may be required to implement the action plans will actually be available, and if so, whether the resulting institutional landscape will be overly complex and difficult to deal with.

Legislative Activity against Corruption

Apart from the above-mentioned laws on conflict of interest, the financing of political parties and electoral campaigns, and the reform of judicial and prosecutorial services, other pieces of legislation or amendments related to anti-corruption efforts have been passed recently. Reforms of the 2003 Penal Code were introduced in 2004, 2006 and 2008 (*Official Gazette*, no. 40/08). The Criminal Procedure Code of 2003 was also amended in 2004 and 2006 and at the time of writing it is in the process of being further amended in parliament, and important changes are expected (see below). The Law on International Legal Assistance in Criminal Matters was passed on 17 January 2008 (*Official Gazette*, no. 04/08). The Law on Free Access to Information was passed in 2005 and a new Law on Public Procurement in 2006. Finally, the Law on the Prevention of Money-Laundering and Terrorist-Financing was passed in 2007 and amended in 2008, while the Law on Witness Protection was passed in 2004. The July 2008 amendments to the Law on Civil Service and State Employees (*Official Gazette*, no. 50/08) introduced some measures to protect civil servants who denounce or inform concerning corruption offenses (whistle-blowers).

The Criminal Code and the Criminal Procedure Code have undergone a number of amendments, including changes that strengthen the role of the prosecution in cases of corruption and organised crime, reflected in the 2007 Constitution and the amended 2008 Law on the State Prosecutor. Additional amendments to the Criminal Procedure Code will include expanded seizure and

¹⁴ The fact that the anti-corruption effort is linked to European integration, along with other signs, may indicate that the EU membership ambition of the country is the main driving force for combating corruption, which may raise questions about the degree of internalisation of this effort and about its sustainability in the long term. For example, the National Commission adopts reports on the implementation of the Action Plan two times per year and presents the findings “to the members of the international community.” The reports evaluate the extent to which each measure has been implemented and make some recommendations—generally reminders of ongoing obligations, but they also signal measures of particular significance in relation to the EC Progress Reports.

confiscation of the proceeds of crime and inversion of the burden of proof in cases of suspicious enrichment of officials. These legal amendments are expected to be adopted by the end of 2009.

Further planned amendments to the Criminal Procedure Code, also foreseen by the end of 2009, include the provision to reverse the burden of proof in the prosecution of corruption offences, and the authorisation to use special investigative means for the investigation of all corruption-related offences. There have also been efforts to strengthen the capacities of law enforcement agencies and other corruption prevention bodies through training, provision of adequate premises and equipment, and increases in the number of staff. The salaries of judges and prosecutors have increased.

Montenegro has adopted in fact most of the key laws relating to corruption prevention, with some of these laws already of the second generation, e.g. the laws relating to the financing of political parties and electoral campaigns, the law on conflict of interest, and the public procurement law. Authorities consider that, other than the planned changes to the Criminal Code and the Criminal Procedure Code, the only remaining legislative gap will be filled in 2009 with the passage of a law on integrity, which is currently being drafted. This law will apparently address two issues: lobbying and the obligation for state institutions to institute integrity plans.

Main Institutions and Administrative Units Related to Anti-Corruption¹⁵

Ministry of the Interior (Police)

Specialised units for the fight against organised crime and corruption have been formed in the Police Directorate and in the State Prosecutor's Office, and specialised departments were established in 2008 in the high courts of Podgorica and Bijelo Polje, with capacities to more effectively adjudicate complex organised crime and corruption cases. The number of specialised personnel has grown over the years, and specific anti-corruption measures that have been undertaken are outlined in the Fourth Report on the Implementation of the National AC Programme. The report indicates that, for the three-year period 2006-2008, out of 776 reported complaints involving corruption offences received by the police, 277 were forwarded to prosecutors; of these, 133 resulted in indictments by prosecutors. With regard to courts, out of 157 indictments received, 105 were adjudicated. The Fifth Report is scheduled to be released in July 2009.

Some recent arrests suggest the increasing effectiveness of these specialised units within the police. These achievements are significant, but more evidence is needed to reach a decisive conclusion on the matter.

Directorate on Anti-Corruption Initiative (DACI)

The DACI is a unit within the Ministry of Finance that was established in 2001 and reformed in 2007 to absorb more competences. The DACI staff is 17-strong, most of whom have been hired recently. Its responsibilities are aimed at promoting preventive measures and legislation against corruption, raising awareness of the issue, and co-operating with private sector organisations, NGOs and other public bodies in the preparation of anti-corruption plans. DACI monitors the implementation of international conventions against corruption of which the country is a signatory as well as international recommendations on the issue, such as those provided by GRECO, SEE Stability Pact and others.

Several activities are taking place in DACI, including educational and research activities. As DACI is to be assigned the function of secretariat of the National Commission overseeing implementation of the National AC Programme, it envisages its deep involvement in the process of drafting the new National AC Programme and Action Plan based on the many diagnostic and research activities it has undertaken in 2008 and 2009.

Looking at the list of duties and the challenges, the goal for DACI could be to develop itself as a sort of national advisory or resource centre on anti-corruption, but it is uncertain whether DACI is

¹⁵ For the State Auditors Institution, see Sigma's 2009 assessment report on External Audit in Montenegro. We do not refer to the Ombudsman in this section because the Montenegrin Ombudsman institution has no relevance for the fight against corruption.

sufficiently resourced to cope with the challenges ahead and to gather together the means that will be required in terms of human and expert capacities in anti-corruption. DACI resources seem to be very reliant on international and bilateral donors (UNDP, Norwegian Government, etc.), and this raises concerns about the sustainability of DACI's activities.

Impact of the Law on Free Access to Information¹⁶

The Law on Free Access to Information was adopted and came into effect in November 2005. The law gives any natural or legal person the right to access information held in any form by state and local authorities, public companies and other entities exercising public powers. Requests must be in writing, including via e-mail. Bodies that have received requests for information must respond within eight days; this period can be extended for another 15 days. In case of emergency, responses must be provided within 48 hours. Exemptions can be made for the following reasons: national security, defense or international relations; public security, commercial or other private or public economic benefits; economic, monetary or foreign exchange policy; prevention and investigation of criminal matters; personal privacy and other personal rights; and internal negotiations.

An individual seeking free access to information must be "significantly harmed" if he is denied access and the harm must be "considerably greater than the public interest in publishing such information". Information cannot be withheld if it relates to ignoring regulations, unauthorised use of public resources, misuse of power, criminal offenses and other related maladministration issues. First instance appeals against access denials are to be made to the supervisory body of the agency concerned and in a second instance to court.

Government bodies are also required to create and publish lists of types of information held, including public registers and records. According to the law, the media ministry must publish a guide. There are sanctions for the refusal by agencies and officials to allow access to information. The law also includes a limited whistle-blower protection provision, which limits sanctions on public employees who publicly reveal misuse or irregularities and who also inform the head of the agency or relevant investigatory agency. The Ministry of Culture and Media is in charge of monitoring the implementation of the law.

There is no law on official secrets defining the nature of those secrets, which in practice means that every bit of information may be marked as a state secret. However, even if not precisely defined, the notion of an official secret is mentioned in article 51 of the Civil Service Law. This provision strongly emphasises public employees' obligation of confidentiality and secrecy for five years or more after leaving office. To disclose "official secrets" before a court, a civil servant needs to have the authorisation of his/her superior. Also, article 143 of the Law on General Administrative Procedure refers to state secrets as justifying a hearing behind closed doors rather than before the public.

The Agency for National Security has issued a decree on the classification of state secrets, but it is reported to have refused to release it. The Criminal Code prohibits the disclosure of official secrets and military secrets. The Law on the Agency for National Security allows individuals to request their files but to date no files have been requested.

These regulations, especially the regulations contained in article 51 of the Civil Service Law and in the Criminal Code, foster a culture of secrecy, opaqueness and confidentiality that is inimical to the idea of transparency and free access to information. It is no surprise that public authorities tend to arbitrarily deny access to their documents and to obstruct that access as much as they can and that this matter concerns a considerable number of cases brought before the Administrative Court. The July 2008 amendment to the Law on Civil Service represents an improvement of the protection to those civil servants and public employees who report suspicions of corruption in good faith, but this protection is unlikely to bring about more transparency in the administration, even if it is combined with the protection granted by the 2004 Law on Witness Protection.

¹⁶ An assessment of this matter is provided in Sigma's 2008 assessment report on the Administrative Legal Framework in Montenegro, at <http://www.sigmaweb.org/dataoecd/49/10/41637656.pdf>

Administration on the Prevention of Money-Laundering and Terrorist-Financing¹⁷

The Administration for the Prevention of Money-Laundering and Terrorist-Financing (APMLTF) was established in 2005, its staff is some 30-strong, and it is the central authority for combating money-laundering and terrorist-financing. Its powers and duties are confirmed in the 2008 Anti-Money-Laundering Law. APMLTF is an independent body whose administrative work is supervised by the Ministry of Finance. Otherwise, it has full operational autonomy. APMLTF has the legal authority to gain access to other agencies' information as well as having full access to publicly available databases maintained by government departments. APMLTF may also exchange information with foreign authorities having similar functions and which have equivalent secrecy rules, if such an information exchange is made with the purpose of preventing and combating money laundering and terrorist financing. Data held at APMLTF is securely protected and only disseminated in accordance with the AML law.

The main law enforcement bodies concerned with the fight against money-laundering and terrorist-financing are the Police Directorate and the State Prosecutor's Office. Both of these bodies, together with their relevant powers and the scope of their activities, have been established by law. A special department for the investigation of money laundering has also been established within the Police Directorate, which also investigates terrorism financing. A special department for combating organised crime, corruption, terrorism and war crimes has also been established within the State Prosecutor's Office.

The evaluators from the Council of Europe considered that measures are in place that provide law enforcement and prosecution authorities with an adequate legal basis for the use of a wide range of special investigative techniques when conducting investigations of money-laundering and terrorist-financing. However, due to the relatively low number of cases investigated and prosecuted, it was not possible to form a conclusion on the effectiveness of these provisions.

Simplification of Administrative Procedures and Licensing

The Programme to Eliminate Barriers to the Development of Entrepreneurship was adopted in October 2007 and its action plan was launched in April 2008, including a monitoring Council to supervise its implementation. The main thrust of the Programme is to simplify licensing procedures, which includes amending the current Law on Administrative Procedures, launching other actions aimed at reducing red-tape, and establishing one-stop-shop schemes. The Programme seems to have produced few concrete results so far.

Conclusion

Montenegro's legislative activity is significant and the country is in the process of bringing national legislation in line with international standards, in particular with regard to criminal legislation and law enforcement capacities. The institutional landscape that is emerging, however, may be overly complex, as the internalisation of the new values represented by these standards is doubtful, making the sustainability of reforms very uncertain.

7. International Co-operation against Corruption

The Montenegrin Constitution (article 9) states that "ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation".

¹⁷ This section is a quotation from the First Mutual Evaluation Report on Montenegro of the Council of Europe European Committee on Crime Problems (CDPC)/ Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism (MONEYVAL), adopted on 16-20 March 2009 at its 29th Plenary Session in Strasbourg. The full report is available on the website of the CoE: [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2009\)10Rep-MNE_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2009)10Rep-MNE_en.pdf). As this report is very recent and has been prepared with a reliable peer review methodology, we refer to it as a good expert analysis and evaluation of the Montenegrin policy and administrative units on the persecution of money-laundering, a powerful anti-corruption mechanism.

Montenegro has not signed the 1997 OECD Convention on Combating Bribery of foreign public officials in international business transactions. It has, however, acceded to other relevant international conventions relating to anti-corruption, as follows:

- 2002 Council of Europe Civil Law Convention on Corruption: signature 7 April 2005, ratification 28 January 2008, and entry into force 1 May 2008;
- 2002 Council of Europe Criminal Law Convention on Corruption: ratification 18 December 2002 and entry into force 6 June 2006;
- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption: signed 20 February 2008, ratified 17 March 2008, and entry into force 1 July 2008.¹⁸

In addition, Montenegro ratified the 2003 United Nations Convention against Corruption (UNCAC) in October 2006.

International co-operation has been relatively high on the reform agenda, with Montenegro joining INTERPOL in 2006 and signing a Strategic Agreement on Co-operation with Europol in 2008. The Police Directorate has begun producing annual reports “On Police Directorate Work and Security Situation” in English. These reports contain a considerable amount of information including, for instance, the most significant achievements in international police co-operation. The Fourth Report on the Implementation of the National AC Programme also indicates that four such joint international actions were carried out in co-operation with the High and Basic Prosecutors’ Office and three in co-operation with the Special Prosecutor for Organised Crime and Corruption.

With regard to extradition, in 2008 six persons were extradited to Montenegro and 19 requests await the decision of the foreign states concerned; six persons were extradited from Montenegro to another state, with 17 more requests still under consideration.

General Conclusions

1. A number of laws related to anti-corruption have been passed and institutions have been established with a view to creating a more systemic framework for combating corruption. Several important integrity areas have been regulated for the first time: financing of political parties, conflict of interest, access to information, and transparency of government institutions. However, flaws in some of this legislation are apparent, which is likely to make its implementation difficult.
2. The regulation of the immunity and inviolability of MPs is up to international standards. The conflict-of-interest regulation may face problems of constitutionality. In any event, this regulation has many loopholes and unjustified exceptions for parliamentarians (article 9 of the new law), which makes the newly adopted regime almost ineffectual.
3. Similar conclusions may be drawn concerning the immunity of government members, although the regulations on incompatibility and conflict of interest have fewer unjustified exceptions like the exception provided in the above-mentioned article 9 for parliamentarians. Concerns remain about the likely ineffectiveness of the Commission on Preventing Conflict of Interest.
4. Much more needs to be done if MPs really want to oversee the activities of the government. If parliamentarians have the political will to do so, increasing the technical capacity of parliamentary administrative services would be crucial for improving parliamentary performance, both in producing legislation and especially in controlling the government.
5. The legislation clearly distinguishes licit from illicit sources of funds for political parties and for electoral campaigning and establishes a transparent state budget funding for parties. Anonymous donations to parties and candidates are forbidden. Campaign expenditures are capped. Financial reporting obligations of political parties and candidates for election are spelled out in legislation, including for in-kind and private donations, as are the penalties for non-compliance, although there is significant room for breaching the rules, and the current system of control is yet to be fully tested. Finally, it is doubtful that the Ministry of Finance is the correct institution for

¹⁸ Information on status with regard to Council of Europe Conventions can be found on <http://conventions.coe.int>.

checking and auditing financial reports of political parties and election candidates. A more politically neutral institution outside the political direction of a minister should exercise this function, such as the State Auditors Institution or the National Electoral Commission, and it should be legally mandated, empowered and resourced to do so.

6. Personnel management rules for judges and prosecutors are in place (recruitment, promotion, performance appraisal, salary levels, and disciplinary arrangements), but they do not guarantee judicial independence from politics. The institutional and legal set-up is still too vulnerable to protect the judicial and prosecutorial services from politicisation. The continuation of justice reform is necessary and should be aimed at strengthening judicial and prosecutorial professionalism, efficiency, independence and accountability. In this respect, it would be important to ensure that judicial and prosecutorial appointments are merit-based, through transparent criteria and procedures.
7. Further progress is needed in the implementation of reforms in the judiciary and in adopting the still pending amendments to criminal legislation, in particular to the Criminal Procedure Code.